

Amendment and Response Under 37 C.F.R. § 1.116
U.S. Serial No. 09/156,952
Page 3 of 9

REMARKS

The Office Action has been carefully considered and the foregoing amendment made in response thereto. The present status of the claims is as follows:

- Claims 1-8, 10, 12-25 are pending in the application.
- Claims 1-8, 10, 12-25 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.
- Claims 1-8, 10, 12-23, and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Moore (U.S. Pat. No. 5,855,289) in view of Julian (U.S. Pat. No. 3,825,143).
- Claim 24 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Moore (U.S. Pat. No. 5,855,289) in view of Julian (U.S. Pat. No. 3,825,143) in further view of Neeley et al. (U.S. Pat. No. 5,164,575).

In view of the above amendment and following remarks, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1-8, 10, and 12-25, and entry of new claim 26.

1. Applicants thank the Examiner for participating in a telephone interview with Applicants' undersigned representative held on May 14, 2001. Applicants respectfully submit that this amendment and response is consistent with the discussion therein.
2. Applicants appreciate the Examiner bringing to Applicants' attention the missing underlining of the term "anti-rotation" in the amended claim 1 of the previous Amendment and Response of January 5, 2001. Applicants thank the Examiner for entering that amendment to claim 1, notwithstanding the inadvertent defect.
3. Claims 1-8, 10, and 12-25 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to point out and distinctly claim the subject matter that Applicants claim as the invention. Specifically, the Office Action states that claim 1 is vague and indefinite as to how the "anti-rotation" lugs prevent rotation of the vial without the use of a storage tray and/or vial sleeve, as disclosed in the specification (p. 8, lines 17-19).

Best Available Copy

Amendment and Response Under 37 C.F.R. § 1.116
U.S. Serial No. 09/156,952
Page 4 of 9

The Office Action rejects claim 1 for failing to recite a specific limitation as described in the specification, namely the use of a storage tray and/or vial sleeve. The use of the storage tray and/or vial sleeve is disclosed in the specification at p. 8, ll. 15-27 in conjunction with Figure 1. The use is also described in the specification at p. 13, l. 3 through p. 14, l. 4 in conjunction with Figures 7A and 7B.

Applicants respectfully submit that the absence of a limitation in the claim that is described in the specification does not make a claim indefinite. "A claim need not claim every function of a working device. Rather, a claim may specify improvements in one function without claiming the entire machine with its many functions." *Rodime PLC v. Seagate Tech., Inc.*, 50 USPQ2d 1429, 1435 (Fed. Cir. 1999).

Applicants' claims are to be interpreted in light of the specification. The use of one or more anti-rotation lugs as depicted in the figures is described in the aforementioned parts of the specification. In particular, the specification details how the anti-rotation lugs 18 mate with the unidirectional interface 54 found in the vial tray. In this case, the anti-rotation lugs 18 react against the ramp faces 58 to prevent rotation of the body 12 during tightening of the cap 14. Specification p. 13, ll. 3-12. With respect to the vial sleeve, the anti-rotation lugs 18 are received by the axial slots 66 of the vial sleeve. In this instance, the axial slots 66 react against the anti-rotation lugs 18, also preventing the rotation of the body 12 during removal and installation of the cap 14. Specification p. 14, l. 1.

Applicants respectfully submit that claim 1, read in light of this clear and unambiguous disclosure in the specification as to the function of the anti-rotation lugs 18 reasonably apprises those skilled in the art both of the utilization and scope of the invention. The language used in claim 1 and in the cited portions of the specification is precise and consistent. There is no uncertainty in the meaning of the language.

Nonetheless, as discussed with the Examiner in the telephone interview, Applicants have amended claim 1 to include the limitation that the anti-rotation lug is for "reacting against proximate structure to facilitate at least one of removal and installation of the cap." Applicants have also added a new claim 26 directed to the proximate surface referenced in claim 1, as

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Amendment and Response Under 37 C.F.R. § 1.116
U.S. Serial No. 09/156,952
Page 5 of 9

amended herein, which can be, for example, a storage tray or vial sleeve. Support for claim 26 can be found in the specification at, for example, p. 8, ll. 17-20.

In light of the disclosure in the specification, Applicants respectfully submit that one of ordinary skill in the pertinent art would be able to ascertain with a reasonable degree of precision and particularity the specific area set out and circumscribed by the claims. Consequently, Applicants submit that claim 1, as amended herein, is sufficiently definite and in compliance with 35 U.S.C. § 112, second paragraph. Because claims 2-8, 10, and 12-26 depend, directly or indirectly, from claim 1, Applicants further submit that claims 2-8, 10, and 12-26 are also rendered sufficiently definite. Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1-8, 10, and 12-25 under 35 U.S.C. § 112, second paragraph, and entry of new claim 26.

4. Claims 1-8, 10, 12-23, and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Moore ("Moore") in view of Julian ("Julian"). Applicants respectfully traverse this rejection as applicable to the claims, as amended.

Moore teaches the use of ribs 64, 70 on a lid 34 that are adapted to flex under a centrifugal load and expand the peripheral member 38 of the lid 34 (col. 5, ll. 34-36). This expansion increases the sealing force applied by the lid 34, tightening the seal between the gasket 54 and the cylindrical wall 26 (col. 6, ll. 43-47). The downward deflection of the ribs 64, 70 also focuses the compressive force applied by the lid 34 away from the center of the stopper 84 onto the area of the stopper 84 that coincides with the annular ring 68 (col. 7, ll. 18-20). Thus, the ribs 64, 70 purportedly serve to increase the effectiveness of the two seals when the container 10 is in use. Because the amount of deflection and corresponding expansion increase in proportion to the centrifugal force, the seals are improved as the force increases. As stated in the Office Action, "Moore does not teach the use of at least one anti-rotation lug about the body outer surface."

Julian teaches the use of "abutments" 19 disposed on the upper ledge 12 of a container 10 and "lugs" 20 disposed on the underside of a lid 11 (col. 2, ll. 18-34). Neither the abutments 19 nor lugs 20 provide an anti-torque function. Rather, when the abutments 19 and lugs 20 are vertically aligned, they provide a lever action when the center of the lid 11 is depressed. This

Best Available Copy

Amendment and Response Under 37 C.F.R. § 1.116
U.S. Serial No. 09/156,952
Page 6 of 9

lever action causes the expansion of the lid rim 16, releasing the lid 11 from undercut groove 14 of the container 10 (col. 2, ll. 59-66). When the lid 11 is placed on the container 10, the lid 11 overlaps the upper ledge 12 of the container 10. Consequently, in this state, the abutments 19 and lugs 20 are neither visible nor accessible. The abutments 19 and lugs 20 cooperate to create a tamper resistant (i.e., "childproof") container 10 that restricts, but does not foreclose, access to its contents. Also included are indicators 22 and a pointer 21 that serve as visual signals to indicate when the lid 11 is properly aligned with the container 10 allow for removal of the former from the latter.

Neither Moore nor Julian teach the limitation regarding the accessibility of the at least one anti-rotation lug "when the cap is engaged with the body..." (Applicants' claim 1, as amended herein). The abutments and lugs of Julian have a different function and are inaccessible when the lid is placed on the container. In Applicants' case, the anti-rotation lugs are disposed to facilitate the application of a torque that restrains the body when the cap is rotated, making attachment and removal of the cap feasible in an automated system. Because the abutments and lugs of Julian are inaccessible when the lid is placed on the container, neither the abutments nor lugs may be used in the application of a restraining torque. Furthermore, the pointer 21 and indicators 22 do not provide an anti-rotation function. Rather, they are solely to provide a visual indication to a user when the lid 11 is oriented properly for opening.

Applicants respectfully submit that Julian fails to cure the deficiencies of Moore with respect to the sole independent claim (claim 1). Applicants submit that claim 1, as amended herein, is allowable and clearly and patentably distinguished over the cited references, either alone or in combination. Consequently, Applicants further submit that claims, all depending, directly or indirectly, from claim 1 are allowable as well.

Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1-8, 10, 12-23, and 25 under 35 U.S.C. § 103(a) as being unpatentable over Moore in view of Julian.

Best Available Copy

Amendment and Response Under 37 C.F.R. § 1.116

U.S. Serial No. 09/156,952

Page 7 of 9

5. Claim 24 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Moore in view of Julian, and in further view of Neeley et al. ("Neeley"). Applicants respectfully traverse this rejection as applicable to the claims, as amended.

Neely teaches the use of a portable apparatus for blood or other sample collection that places indicia, including a bar code, on a test-tube. Applicants' claim 24 depends from claim 23, which in turn depends from claim 1. Applicants respectfully submit that Neeley fails to cure the deficiencies of Moore and Julian with respect to the sole independent claim (claim 1) as discussed above. Because claim 1, as amended herein, is allowable and clearly and patentably distinguished over the cited references, either alone or in combination, Applicants respectfully submit that claim 24, ultimately depending from claim 1, is allowable as well.

Applicants respectfully request reconsideration and withdrawal of the rejection of claim 24 under 35 U.S.C. § 103(a) as being unpatentable over Moore in view of Julian, and in further view of Neeley.

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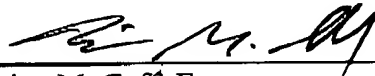
Amendment and Response Under 37 C.F.R. § 1.116
U.S. Serial No. 09/156,952
Page 8 of 9

CONCLUSION

In view of the foregoing, Applicants submit that claims 1-8, 10, and 12-26, as amended herein, are clearly and patentably distinguished over the cited references, either alone or in combination, and are therefore allowable. Applicants respectfully request entry of this Amendment and Response, reconsideration, and early favorable action by the Examiner.

The Examiner is cordially invited to contact Applicants' undersigned representative at the number listed below to discuss any outstanding issues.

Respectfully submitted,



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Amendment and Response Under 37 C.F.R. § 1.116
U.S. Serial No. 09/156,952
Page 9 of 9

VERSION WITH MARKINGS TO SHOW CHANGES MADE

May 15, 2001

IN THE CLAIMS:

1. (Three times amended) A sample vial for use in an automated test apparatus, the sample vial comprising:
 - a body comprising an outer surface, an open end, a closed end, and at least one anti-rotation lug about said body outer surface;
 - a cap releasably engagable with said body, said cap comprising an outer surface and a torque pattern on said cap outer surface, said torque pattern comprising a plurality of radially disposed ribs; and
 - a seal disposed between said body and said cap so as to be capable of forming a substantially fluid-tight seal therebetween,

wherein the at least one anti-rotation lug is accessible when the cap is engaged with the body for reacting against proximate structure to facilitate at least one of removal and installation of the cap.
26. (New) The invention of claim 1 wherein the proximate structure is selected from the group consisting of a storage tray and a vial sleeve.

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